IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2740 of 2005
With
FIRST APPEAL No. 2741 of 2005
with
CIVIL APPLICATION No.8920 & 8921 of 2005

Date of Decision: 30-11-2005

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PUJSANG DAHYASANG MAKWANA - Appellant(s)

Versus

VIKRAMSINH MANUSINH CHAVDA DELETED AS PER COURT ORDER & 2 - Respondent(s)
(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh,
Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant(s):
Shri Hardik C.Rawal, Adv.

For Respondent-3:
Shri Shalin Mehta, Adv.

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Both these Appeals are proposed to be decided by this by this judgment since they arise out of

Whether reporters of Local Papers may be allowed to see the Judgment?

common award dated 26.8.2004 passed by Motor Accident Claims Tribunal (Aux.), Sabarkantha, Himmatnagar, MACP Nos.8/94 and 9/94.

2. Briefly stated, accident took place on 8.8.93 at 4:30 p.m. on Rakhial-Harsol road in the vicinity of village Becharaji. It is alleged that the claimants were moving on the left side of the road. The driver of Chhakdo-rickshaw came from behind driving the vehicle rashly and negligently, hit them, resulting in serious injuries. They were shifted to hospital for treatment. Claims have been opposed by opponents. Occurrence, injuries suffered by the claimants and other allegations in the claim Appeals disputed. Insurance Company alleges that Chhakdo-rickshaw is a goods vehicles, therefore, passengers cannot travel in it. Consequently, Insurance Company is not liable to pay compensation. After trial, the Tribunal passed

the award against the owner while Insurance Company has been exonerated on the ground that Chhakdo-rickshaw, passenger could not travel. Since claimants were traveling in it, Insurance Company is not liable. In these two cases, compensation to the extent of Rs.13,760/- and Rs.36,200/- has been awarded with interest at the rate of 9% from the date of application till payment. Through these Appeals, claimants seek enhancement of compensation.

3. Learned counsel for the parties heard, record perused. Finding of Claims Tribunal that claimants were traveling in Chhakdo-rickshaw is not based on evidence. In the claim applications, it is stated that claimants were moving on the left side of road, Chhakdo-rickshaw driven rashly and negligently by its driver hit them from behind, they sustained injuries. Similar statements have been made during trial of the

claim. Therefore, finding to the contrary is set aside. With regard to compensation, Shri Hardik Rawal seeks enhancement on the ground that compensation has not been assessed properly under different heads; while Shri Shalin Mehta, learned counsel for Insurance Company, submits that just compensation has been awarded. From perusal of paragraphs 16 to 18 of the Award, we find that there is scope for enhancement of compensation under the heads of Pain, shock and suffering and medicines, rich diet, transportation charges and attendant charges since awarded amount is less looking to the nature of injuries suffered, treatment undergone and spendings on medicines, rich diet, transportation charges and attendant charges as per prevailing prices.

4. Accordingly, in MACP no.8/94 (First Appeal No.2741/05), there shall be enhancement of Rs.5,000/- under the head of pain, shock and suffering and Rs.5,000/- under the head of

medicines, rich diet, transportation charges and attendant charges, taking the total amount of compensation to Rs.23,760/-.

In MACP No.9/94 (First Appeal No.2740/05), similar enhancement is made under the two heads of pain, shock and suffering, and medicines, rich diet, transportation charges and attendant charges, taking total amount of compensation to Rs.46,200/-.

5. Enhanced compensation will carry same rate of interest as awarded by the Tribunal from the date of application till payment. Appeals are allowed to aforesaid extent and disposed of accordingly leaving the parties to bear their own costs. Compensation be deposited in two months by the Insurance Company and paid to the claimants. Civil Applications stand disposed of.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)